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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13838
Docket No. 13699
05-2-03-2-39

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division of TCU
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

- “1. The Carrier violated the provisions of Rule 23(i) of the Controlling Agreement when discipline of a 3-day suspension was assessed against Coach Cleaner Charles Beavers without benefit of a hearing.
2. The Carrier shall compensate Coach Cleaner Charles Beavers for the 3-days he was held out of service and remove from his record all reference to this improper discipline.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This is a discipline case which centers upon procedural issues. On this property, the Rules require that there be a scheduled Intent to Impose Discipline Meeting wherein the Claimant and his representative discuss with the Carrier the alleged violation. In this instance, the Carrier alleged that the Claimant was excessively absent on the dates of August 4, 7, 12, 18, 19, 21, 22, 25 and 29, 2002. Rule 23(i) states in pertinent part:

"If the Corporation decides that discipline of an employee is warranted, the employee will be notified in writing with a copy to his duly accredited representative of the intent to discipline him."

The Organization argues that the Carrier failed to properly notify the employee and to submit a copy to the Claimant's representative. The Claimant maintains that he was not properly notified, but further that his non-attendance was due to the fact that the Carrier denied his request for a postponement. The Organization maintains that there is no proof that the Organization was sent a copy of the Intent to Impose Discipline Meeting. The Organization notes that the Carrier failed to produce a Certified Mail receipt corresponding to the Claimant's specific scheduled meeting to prove that it was sent to his representative. Therefore, the charges must be dropped and the discipline rescinded.

The Carrier denies all of the Organization's assertions. It argues that it scheduled the Intent to Impose Discipline Meeting for September 25, 2002. The Carrier further argues that it fully complied with Rule 23 of the Agreement, did not deny a request for a postponement, and when the Claimant and Organization failed to appear, the Rule was self executing. Rule 23(c) states that, "If the employee fails to attend the meeting, the Corporation may assess whatever discipline it considers appropriate subject to appeal . . ." The Claimant failed to appear and the appropriate discipline was assessed.

The Board has carefully reviewed this full record to consider whether the Claimant and the Organization were notified. The Notice to Impose Discipline was issued September 16, 2002. The Meeting over the Intent to Impose Discipline was scheduled for September 25, 2002. There is nothing in the language of the Rule that requires a Certified Mail notification. The record contains sufficient probative evidence for this Board to conclude that both the Claimant and the Organization

were properly notified of the scheduled meeting and that there was no request for a postponement.

The record of evidence is sufficient to prove that the Claimant was hand delivered the written notification. The Claimant states that he "did not receive any hand delivered letter" advising of the Intent Meeting, but also states that he requested a postponement from his Foreman. Claimant was aware of the meeting if he argues that he requested a postponement. As for the disputed postponement request, we have reviewed the on-property record and conclude that there is insufficient proof of a requested postponement. The Foreman maintains that no postponement request ever occurred and the Claimant's supporting signature statement from another Coach Cleaner is not persuasive. The Board finds that the Claimant certainly knew of the Intent to Impose Discipline Meeting. We also conclude that there is insufficient proof of a requested postponement.

As for the Organization, the Board finds that they were properly notified. The notification went to the correct address. The argument that it was signed by an individual who did not reside at that address is not on point. The Rule holds that the Organization be notified and it was notified. There is sufficient probative evidence of record to conclude that the Organization was properly sent the correct information to the correct address. Even if the Organization does not know who signed for the Certified Mail delivery, it does not prove a Carrier violation of the Rule.

While the Board does not prefer *in absentia* decisions, there is nothing in this record to show procedural error or to find a Carrier violation of Rule 23. The Board concludes that the Carrier's disciplinary assessment, which invoked a prior three day deferred suspension, was proper. It will not be disturbed. The claim is denied.

AWARD

Claim denied.

ORDER

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This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 1st day of April 2005.